



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Cadence Innovation, LLC (9-CA-43672, et al.; 353 NLRB No. 77) Troy, MI Jan. 16, 2009. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Tawana Merriewether. The Respondent hired Merriewether as a temporary employee in May 2006 and promoted her to permanent status on Nov. 6, 2006. The Respondent stated that she would receive a pay raise after 90 days as a permanent employee. She received the pay raise on Feb. 5, 2007. [\[HTML\]](#) [\[PDF\]](#)

In early 2007, the Union began an organizing effort. Merriewether became an active, open union supporter, collecting union authorization cards, wearing and distributing union buttons, and speaking to coworkers about the Union during breaks and outside of work. After becoming aware of Merriewether's union activities, Merriewether's supervisor began to stand and watch her for long periods of time.

Merriewether attended, under Union subpoena, a Board hearing on the Union's representation petition on March 6, 2007. The Respondent gave her a written warning the next day, asserting that she had accumulated 6 occurrences of absence. Even though Merriewether did not miss any time thereafter, the Respondent discharged her 8 days later on the basis that she had accumulated 7-1/3 occurrences of absence. Human Resource Manager Lipsitz stated that her "hands were tied" regarding Merriewether's discharge, because Merriewether was still in her 90-day probationary period. Merriewether denied that she was still in her probationary period, noting she had already received the 90-day pay raise. Merriewether's discharge came 130 days after becoming a permanent employee.

The Respondent's written attendance policy provided for termination after 8 occurrences of absence. However, the Respondent asserted that a stricter, albeit unwritten, attendance policy applied to employees who were probationary. Lipsitz, who had discharged Merriewether, testified variously that the probationary period was the first 90 days or first 90 workdays of employment. However, another Human Resources official testified that the Respondent had no set number of days after which an employee's probationary period ended. Rather, the Respondent used various factors to determine whether an employee was probationary and how many absences would result in discharge, including days worked, number of occurrences, input from the supervisor, days employed, and workforce needs. A third Human Resources official determined that Merriewether was probationary at the time of her discharge. The Respondent, however, did not call that official to testify.

The judge found that the General Counsel met his initial burden of showing that Merriewether's discharge was unlawful. He found that Merriewether engaged in union activity, that the Respondent knew of Merriewether's participation in such activity, and that the evidence established the Respondent's antiunion animus. Rejecting the Respondent's contentions that Merriewether was a probationary employee and that the Respondent had a more stringent attendance policy for probationary employees, the judge found that the Respondent failed to meet its burden of showing that it would have terminated Merriewether even in the absence of her union activities.

In adopting the judge's finding of a violation, Chairman Schaumber noted that, under his view, the General Counsel's initial burden of proof must include as an independent element a causal nexus between antiunion animus and the adverse employment action. Chairman Schaumber found that such a nexus was shown in this case. Additionally, in adopting the judge's finding that the General Counsel established antiunion animus, Chairman Schaumber did not rely on the judge's findings that the Respondent opposed unionization and hired an outside consultant to disseminate antiunion information to employees.

The Board also denied the General Counsel's request for compound interest for any make-whole relief awarded. The Board stated: "We are not prepared at this time to deviate from our current practice of assessing simple interest."

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Auto Workers (UAW); complaint alleged violation of Section 8(a)(1) and (3). Hearing at Detroit, March 25-28, 2008. Adm. Law Judge Paul Bogas issued his decision Sept. 17, 2008.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Horizon Contract Glazing, Inc. (Painters District Council 16 and Glassworkers Local 767) Sacramento, CA Jan. 15, 2009. 20-CA-32880(E); JD(SF)-01-09, Judge Jay R. Pollack.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

**DECISION, ORDER [setting aside election
conducted from April 30 through May 15, 2008],
AND DIRECTION OF SECOND ELECTION**

Mail Contractors of America, Inc., Des Moines (Urbandale), IA, Marion, IL, Oakwood, IL, Somerset, PA, Milwaukee, WI, Green Bay, WI, Dubuque, IA, North Platte, NE, Caldwell, ID, Cedar Rapids, IA, York, NE, 18-RD-2464, Jan. 16, 2009

**DECISION, ORDER [setting aside election
conducted on October 10, 2008], AND
DIRECTION OF SECOND ELECTION**

Bread Song Bakery/Integrated Bakery Resources, Lake Oswego, OR, 36-RC-6406,
Jan. 16, 2009

DECISION AND CERTIFICATION OF REPRESENTATIVE

Wilbur Curtis Co., Montebello, CA, 21-RD-2852, Jan. 15, 2009

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Mutual Savings Credit Union, Selma, AL, 15-RC-8740, Jan. 12, 2009

***(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)***

Bae Systems, Mililani, HI, 37-RC-4194, Jan. 16, 2009 (Chairman Schaumber and
Member Liebman)

LM Waste Service, Corp., Guaynabo, PR, 24-UC-252, Jan. 15, 2009,
(Chairman Schaumber and Member Liebman)

Ortho-McNeil-Janssen Pharmaceuticals, Inc., Bridgewater, NJ, 22-RC-12970,
Jan. 15, 2009 (Chairman Schaumber and Member Liebman)

York's of Houlton, Houlton, ME, 1-RC-22282, Jan. 15, 2009 (Chairman Schaumber and
Member Liebman)

Specialty Hospital of Washington-Hadley, Washington, DC, 5-RM-1019, Jan. 15, 2009
(Chairman Schaumber and Member Liebman)

Miscellaneous Board Decisions and Orders

**ORDER [denying Union's Motion
requesting acceptance of untimely filing]**

Mail Contractors of America, Inc., Des Moines (Urbandale), IA, Marion, IL, Oakwood, IL,
Somerset, PA, Milwaukee, WI, Green Bay, WI, Dubuque, IA, North Platte, NE,
Caldwell, ID, Cedar Rapids, IA, York, NE, 18-RD-2464, Jan. 14, 2009
